



## 1997 SENATE BILL 272

August 14, 1997 - Introduced by Senators GROBSCHMIDT, ROESSLER, PLACHE, FARROW and WEEDEN, cosponsored by Representatives DUFF, OLSEN, R. YOUNG, GREEN, BOCK, OTT, HASENOHRL, GARD, M. LEHMAN, GOETSCH, MUSSER, URBAN, VRAKAS, SERATTI, R. POTTER, CULLEN and PLOUFF. Referred to Committee on Education.

1     **AN ACT to amend** 115.81 (2) and 904.085 (2) (a); **to repeal and recreate** 115.76  
2             (6); and **to create** 115.812 of the statutes; **relating to:** mediation of special  
3             education program disputes between a parent and a school board.

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### *Analysis by the Legislative Reference Bureau*

This bill directs the department of public instruction (DPI) to establish by July 1, 1998, a program for the voluntary mediation of disputes relating to a child's special education program between the agency responsible for providing the child's program (usually the school board) and the child's parent.

Under the program, DPI must maintain a roster of mediators qualified to resolve such disputes. In order to be included on the roster, an individual must participate in a training program approved by DPI. Either party to the dispute, or both parties jointly, may request DPI to arrange for mediation. A party may nominate a mediator from the roster. If neither party nominates a mediator, DPI must propose a mediator from the roster. Either party may request DPI to propose a different mediator. Once engaged in mediation, either party may withdraw at any time, and no adverse inference may be drawn by any hearing officer or adjudicative body from the fact that a party did not consent to mediation, that a party withdrew from mediation or that mediation did not result in settlement of the dispute. However, if the parties resolve the dispute through mediation, the resolution is legally binding.

The bill directs DPI to establish a schedule for the compensation of mediators and the reimbursement of their expenses and to use federal moneys to pay mediators

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according to the schedule. If the parties agree that the amount of compensation paid to a mediator should be greater than the schedule allows, the additional compensation is the responsibility of the parties.

Finally, the bill authorizes DPI to contract with a private, nonprofit agency to administer the mediation program or for mediator training or other services related to the administration of the program.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 115.76 (6) of the statutes is repealed and recreated to read:

2           115.76 (6) "Parent" means a biological parent; a husband who has consented  
3 to the artificial insemination of his wife under s. 891.40; a male who is presumed to  
4 be the child's father under s. 891.41; a male who has been adjudicated the child's  
5 father under ss. 767.45 to 767.51 or by final order or judgment of a court of competent  
6 jurisdiction in another state; an adoptive parent; a guardian, other than the state or  
7 a county or child welfare agency; a legal custodian, other than the state or a county  
8 or child welfare agency; a person acting as parent, as defined by the department by  
9 rule; a person appointed as a sustaining parent under s. 48.428; or a surrogate parent  
10 appointed under s. 115.81 (9). "Parent" does not include any person whose parental  
11 rights have been terminated.

12           **SECTION 2.** 115.81 (2) of the statutes is amended to read:

13           115.81 (2) NOTICES. A school board shall fully inform the parent of any action  
14 it plans to take regarding the parent's child and of all procedural safeguards,  
15 including mediation under s. 115.812, available to the parent.

16           **SECTION 3.** 115.812 of the statutes is created to read:

17           **115.812 Mediation. (1) DEFINITIONS.** In this section:

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1           (a) “Dispute” means any disagreement between parties concerning the  
2           proposal or refusal to initiate or change the identification, evaluation or educational  
3           placement of a child with exceptional educational needs or the provision of an  
4           appropriate special education program to such a child, or any disagreement between  
5           parties concerning whether a pupil has exceptional educational needs. “Dispute”  
6           includes any such disagreement between parties in which other processes, including  
7           a hearing or appeal under s. 115.81 or litigation, have been requested or commenced.

8           (b) “Mediation” has the meaning given in s. 802.12 (1) (e).

9           (c) “Party” means a competent adult pupil or the parent of a child or  
10          incompetent adult pupil who is the subject of a dispute, and the school board or state  
11          or county residential facility that is responsible for providing an appropriate special  
12          education to the child or pupil.

13          **(2) REQUEST FOR MEDIATION, CONSENT OF PARTIES.** (a) By July 1, 1998, the  
14          department shall establish a program for the mediation of disputes between parties.  
15          Upon the establishment of the program, a party may request the department to  
16          arrange for mediation of a dispute at any time. The request shall be in writing, shall  
17          briefly describe the dispute and shall identify the parties. Both parties may jointly  
18          request mediation.

19          (b) If only one of the parties requests mediation, within 5 business days after  
20          receiving the request the department shall notify the other party in writing of the  
21          request for mediation. The notice shall include all of the following:

22                1. An explanation of the mediation process and its advantages.

23                2. A statement that participation in mediation is voluntary and that agreement  
24          or refusal to participate will not affect the resolution of the dispute in any pending

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1 or potential adjudicative process, or the timing of that process, unless the parties  
2 agree otherwise.

3 3. A request that the party notify the department within 5 business days after  
4 receiving the notice regarding the party's consent or refusal to participate in  
5 mediation.

6 (c) If the department does not receive a timely response under par. (b) 3. or if  
7 the other party notifies the department under par. (b) 3. of its refusal to participate  
8 in mediation, the department shall so notify the party that requested mediation.

9 **(3) APPOINTMENT OF MEDIATOR.** (a) A party that requests mediation may  
10 nominate a mediator from the roster under sub. (4). If a party nominates a mediator,  
11 the department shall include in the notice under sub. (2) (b) the name of the  
12 nominated mediator.

13 (b) 1. If both parties nominate the same person as mediator, the department  
14 shall appoint that person as mediator if he or she is on the roster under sub. (4) and  
15 available to mediate.

16 2. If both parties request mediation but neither party nominates a mediator,  
17 the department shall propose a mediator from the roster under sub. (4).

18 3. If both parties consent to mediation but the party that requests mediation  
19 does not nominate a mediator, the nominated mediator is not available or the other  
20 party does not consent to the appointment of the nominated mediator, the  
21 department shall propose a mediator from the roster under sub. (4).

22 (c) Whenever the department proposes a mediator under par. (b) 2. or 3., it shall  
23 send information about the mediator's training and experience to both parties.  
24 Within 3 business days after receiving the information, either party may request the  
25 department to propose a different mediator from the roster under sub. (4).

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1           **(4) ROSTER OF MEDIATORS.** (a) In consultation with the council on exceptional  
2 education, the department shall maintain a roster of mediators qualified to resolve  
3 disputes. The department may include a person on the roster if all of the following  
4 apply:

5           1. The department determines that the person has the appropriate skills and  
6 knowledge to act as a mediator under this section.

7           2. The person participates in a training program of at least 5 days' duration that  
8 has been approved by the department.

9           3. The person agrees to mediate, at the rate of compensation established by the  
10 department, the number of disputes required by the department each year.

11           4. The person consents to be observed by a department representative at any  
12 mediation session if the parties consent.

13           (b) The department may not maintain a person on the roster unless he or she  
14 participates in at least one day of additional training approved by the department  
15 each year.

16           (c) Subject to subch. II of ch. 111, the department may remove from the roster  
17 any person whom it believes cannot serve effectively as a mediator.

18           **(5) MEDIATION.** (a) Unless both parties agree otherwise, mediation shall  
19 commence within 21 days after the mediator is appointed and shall not delay  
20 hearings or appeals related to the dispute.

21           (b) The parents of the child or adult pupil and 2 representatives of the school  
22 board or state or county residential facility may participate in mediation. With the  
23 consent of both parties, other persons may participate in mediation. With the  
24 consent of both parties, a department representative may observe the mediation  
25 sessions.

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1           (c) At the commencement of mediation, the mediator shall inform the parties  
2 of the information that is required to be reported to the department for the purpose  
3 of administering the mediation program. The department may not require a  
4 mediator to disclose the substance of any matter discussed or communication made  
5 during mediation.

6           (d) Either party may recess a mediation session to consult advisors, whether  
7 or not present, or to consult privately with the mediator. The mediator may recess  
8 a mediation session to consult privately with a party. If the mediator does so, he or  
9 she shall disclose the general purpose of the consultation but may not reveal other  
10 information about the consultation without the consent of the party consulted.

11           (e) Unless both parties and the mediator agree otherwise, no person may record  
12 a mediation session.

13           (f) The mediator and either party may withdraw from mediation at any time.

14           (g) No adverse inference may be drawn by any hearing officer or adjudicative  
15 body from the fact that a party did not consent to mediation, that a mediator or party  
16 withdrew from mediation or that mediation did not result in settlement of the  
17 dispute.

18           **(6) AGREEMENTS.** If the parties resolve the dispute or a portion of the dispute,  
19 or agree to use another procedure to resolve the dispute, the mediator shall ensure  
20 that the resolution or agreement is reduced to writing, that it is signed by the parties  
21 and that a copy is given to each party. The resolution or agreement is legally binding  
22 upon the parties.

23           **(7) MEDIATOR COMPENSATION.** (a) The department shall establish a schedule for  
24 the compensation of mediators and the reimbursement of their expenses. The  
25 department shall pay mediators from the appropriation under s. 20.255 (1) (me).

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1 (b) If the parties agree that the amount of compensation paid to a mediator  
2 should be greater than the schedule under par. (a) allows, the additional  
3 compensation is the responsibility of the parties.

4 (c) If the parties have agreed to mediation by a mediator who is not on the roster  
5 under sub. (4), the mediator's compensation is the responsibility of the parties.

6 **(8) PROGRAM EVALUATION.** The department may require that mediators, and  
7 may request that parties, participate in the evaluation of the mediation program.  
8 The department shall ensure that mediators and parties may participate in  
9 evaluating the program without being required to identify themselves or the other  
10 mediation participants. The department may not disclose a party's or mediator's  
11 evaluation to any other mediation participant without the party's or mediator's  
12 consent.

13 **(9) CONTRACT FOR SERVICES.** The department may contract with a private,  
14 nonprofit agency to administer the mediation program under this section or for  
15 mediator training or other services, including outreach and promotion, related to the  
16 administration of the program.

17 **SECTION 4.** 904.085 (2) (a) of the statutes is amended to read:

18 904.085 **(2)** (a) "Mediation" means mediation under s. 93.50 (3), conciliation  
19 under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) 3. or 111.87, mediation  
20 under s. 115.812, negotiation under s. 289.33 (9), mediation under ch. 655 or s.  
21 767.11, or any similar statutory, contractual or court-referred process facilitating  
22 the voluntary resolution of disputes. "Mediation" does not include binding  
23 arbitration or appraisal.

24 **(END)**